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10/809,172	03/25/2004	Timothy S. Pack	MS1-3990US	6811
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LEE & HAYES, PLLC 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201				
EXAMINER				
LOVEL, KIMBERLY M				
ART UNIT		PAPER NUMBER		
2167				
NOTIFICATION DATE		DELIVERY MODE		
11/04/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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lhptoms@leehayes.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: TIMOTHY PAEK, SUSAN DUMAIS and RONALD LOGAN

Application No. 10/809,172
Technology Center 2100

Mailed: November 3, 2009

Before TOI JOHNSON *Review Paralegal*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 2, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

PRIOR ORDER FOR RETURN

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on April 17, 2009 and September 8, 2009 wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made in entirety. The matters still requiring attention prior to docketing are identified below.

EXAMINER’S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner’s Answer mailed May 1, 2009 under the heading “Grounds of rejection” is not consistent with the grounds of rejection of claims set forth in the Final Rejection mailed February 15, 2008. The grounds of rejection of the claims as provided in the Examiner’s Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading “New Grounds of Rejection” in the Examiner’s Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details.

Specifically, a review of the Examiner's Answer finds a new ground of rejection for claim 20 as being rejected under 35 U.S.C. 101. However, the final rejection finds that the above named rejection was not discussed. The TC Director or his/her designee approval is required for the 35 U.S.C. 101 rejection.

The examiner may provide the required signature on a PTOL-90, rather than issuing an entire Examiner's Answer.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) issue a PTOL-90, which include the required signature; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

LEE & HAYES, PLLC
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201